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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,862

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Peter Sebelius

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EXAMINER

THANH, QUANG D

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

03/15/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/579,862	Applicant(s) SEBELIUS ET AL.	
	Examiner Quang D. Thanh	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/17/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

2. The abstract of the disclosure is objected to because "means" has been used in lines 9,11, 13 and 14. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Re claim 4, "the flexible means" lacks antecedent basis, and the phrase "the like" renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by "the like"), thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

6. Re claim 5, "the flexible means" lacks antecedent basis, and the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-4, 6-10 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hurvitz (US 3,374,783).

9. Re claims 1-4, 6-10 and 15, Hurvitz discloses a positioning device for use in an apparatus for treating sudden cardiac arrest in a patient in a supine position, the device comprising a flexible strap means 12 (fig. 1) having a first end, a second end and a tensioning means 21 (fig. 2) disposed between the first and second ends, first and second end portions (fig. 2) extending from the first and second ends, respectively, comprising means for attachment (fig. 2) to the apparatus at first and second positions thereof, respectively, the flexible strap means 12 having a mounted tensioned length sufficient to extend around the patient's neck, and at least one of said end portions is releasably attached (fig. 2); wherein the tensioning means (col. 2, lines 16-19) is integrated with the attachment means 21; wherein the positions of attachment are in an anterior frontal plane; wherein the flexible means 12 is a belt (col. 1, lines 68-69); wherein the means for attachment comprises a snap connection 21 (col. 2, lines 16-19); wherein one member of the snap connection is mounted on the frame and the other member is mounted on an end portion of the flexible strap means (fig. 2); wherein the frame comprises two legs 11 (fig. 2) disposed on either side of the patient, the one

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member of the snap connection being mounted on one 11 of the legs (fig. 2); where the mounting on the frame is releaseable (fig. 2); the mounting on the frame allows said one member of the snap connection to be displaced between a proximal and a distal face of the frame (fig. 2); wherein said tensioning means 21 is comprised by the member of the snap connection mounted on an end portion of the flexible strap means (fig. 2, col. 2, lines 16-19).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hurvitz. Hurvitz discloses the claimed invention except for the flexible means is made of a polymer material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select a polymer material for the belt, for the purpose of providing a suitable material for the belt to secure the apparatus, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

12. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hurvitz in view of Waide et al. (US 5,399,148). Hurvitz discloses the claimed invention

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except for a neck support of a compressible material; wherein the neck support is slidably displaceable along the flexible strap means; and means for hindering displacement of the neck support in a loaded state thereof. Waide et al. teaches a neck support (fig. 1) of a compressible material (fig. 1); wherein the neck support is slidably displaceable along the flexible strap means; and means for hindering displacement of the neck support in a loaded state (fig. 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the Hurvitz's reference, to include a neck support, as suggested and taught by Waide et al., for the purpose of providing suitable support to the neck portion of a user during use.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Quang D. Thanh/
Primary Examiner, Art Unit 3771